THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13977 OF 2005

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ORDER:

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The Writ Petitioner is the fair price shop dealer of Vemula village, Mundlamur Mandal, Prakasam District. By order dated 16.12.2004, the 3rd respondent-Revenue Divisional Officer, cancelled the authorization of the petitioner. On an appeal preferred by the petitioner, the order of the 3rd respondent was confirmed by the 2nd respondent - Joint Collector, Ongole by proceedings dated 10.03.2005. The revision preferred before the 1st respondent - District Collector, Ongole also ended in dismissal and the vacancy was directed to be notified and filled up immediately. The said orders are under challenge in this Writ Petition.

It is not in dispute that the petitioner was served with a notice dated 23.09.2004 by the 3rd respondent calling upon the petitioner to explain as to why his authorization should not be cancelled on the allegations specified thereunder. The six charges framed against the petitioner are as under:

> Charge No.1: Being a responsible F.P. shop dealer you have violated Government orders by preparing register in the hospital instead of keeping them in the F.P. Shop.
>
> Charge No.2: The dealer has violated Government orders by diverting the rice meant for public distribution to the Black Market on 27.7.2004 and again brought back and kept in the house of Annapureddy Chirrareddy on 29.7.2004.
>
> Charge No.3: The dealer has violated Government orders by storing the rice in a different room without obtaining the permission from higher authorities.
>
> Charge No.4. On inspection of the F.P. shop on 29.7.204 rice is found less in the quantity.
>
> Charge No.5: The charge is framed that the dealer has not kept the stock in the house where F.P. shop is being run, but kept in the house of Annapureddy Chirrareddy.
>
> Charge No.6: The charge is framed that the dealer is diverting P.D.S.

rice to the black market and causing inconvenience to the cardholders."

It is relevant to note that certain complaints were received from the villagers of Vemula village of Mundlamur Mandal making allegations against the petitioner with regard to diversion of P.D.S rice to black market through a lorry bearing No.AP - 7T-1229. On the basis of the said complaints, the Mandal Revenue Officer, Mundlamur Mandal on 29.07.2004 visited the village and seized the lorry as well as 158 bags of rice available in the house of one Annapureddy Chirrareddy, allegedly kept by the petitioner.

In pursuance thereof, proceedings under Section 6-A of the Essential Commodities Act, 1955 were initiated for confiscation of the seized rice and the lorry and the Joint Collector, Prakasam District, having conducted due enquiry by order dated 7.09.2004 ordered confiscation of 10% of the stock seized. However, it was held that since at the time of seizure the lorry was found to be empty, and it was kept at some distance from the fair price shop, the lorry was not liable for confiscation. Even with regard to the allegations made against the petitioner, it was found that there was no clear evidence that the petitioner had brought the rice in the said lorry with an intention to divert the same to black market and that the stocks available were tallied with reference to the Book balance. However, it was found that since the petitioner had kept the P.D.S stock in two houses without permission from the competent authority, she had contravened the provisions of the A.P. State P.D.S Control Order, 2001 as well as the conditions of the authorization, and accordingly, 10% of the stock seized was ordered to be confiscated.

Admittedly, disciplinary proceedings were initiated after the said order of confiscation on the basis of the report of the Mandal Revenue Officer dated 30-07-2004 with regard to his inspection conducted on 29-7-2004. As noted above, almost all the charges mentioned in the show- cause notice dated 23.09.2004 relate to the very same allegation of diversion of rice meant for public distribution to the black market on 27.07.2004. Though the petitioner denied the allegations and explained the reasons in detail for keeping the P.D.S rice in the house of Annapureddy Chirrareddy, the 3rd respondent concluded that the explanation was not satisfactory and accordingly ordered cancellation of the authorization. It is to be noted that in spite of the clear finding recorded by the Joint Collector in the order of confiscation

dated 7.09.2004 that the lorry was found empty and was kept at some distance from the fair price shop and that there was no evidence to establish that the petitioner had brought the rice in that lorry, strangely, the Revenue Divisional Officer did not take the said findings of fact into consideration and proceeded with the enquiry on an assumption that the petitioner had transported rice in the lorry on 27.07.2004, and held that all the charges were proved. It is true that the proceedings under Section 6-A of the Essential Commodities Act, 1955, which provide for confiscation of the seized stock, and the disciplinary proceedings under the provisions of the A.P. State P.D.S Control Order, 2001 are independent from one another. However, since both the proceedings were initiated on the basis of the very same allegations, when the competent authority in the order of confiscation had already recorded certain findings, in the absence of any fresh material to establish the very same allegations, the Revenue Divisional Officer was not justified in concluding that the petitioner had transported rice on 27.07.2004 in a lorry bearing No. AP-7T- 1229. Further the finding recorded on charge No.2 shows that the Revenue Divisional Officer arrived at the conclusion only on the basis of news items published in the press on 30.07.2004 without conducting any independent enquiry. The said procedure adopted by the Revenue Divisional Officer cannot be held to be proper and consequently the findings recorded in the order of cancellation which are not based on the material on record cannot be sustained. The 2nd respondent-appellate authority as well as the 1st respondent-revisional authority merely confirmed the findings recorded by the Revenue Divisional Officer without application of mind to the relevant factors.

It is true that the Joint Collector ordered confiscation of 10% of the seized stock, however the allegation held to be proved was only to the extent of keeping the stock meant for public distribution in a different premises without obtaining permission from the competent authority. Hence, the respondents 1 to 3 ought to have considered whether the gravity of allegations warrants cancellation of authorization.

For the aforesaid reasons, the order of cancellation, as confirmed by the respondents 1 and 2, is set aside and the Writ Petition is disposed of remitting the matter back to the 3rd respondent to conduct enquiry afresh after affording due opportunity to the petitioner and pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of six weeks from the date of

receipt of this order. No costs.

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(G. ROHINI, J.)

10th February, 2006.

Note: CC in one week.

(B/O)

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13977 OF 2005

10th February, 2006.

Between:

Chennareddy Krishnamma. .. Petitioner.

And

The District Collector, District Magistrate,

Ongole, Prakasam District and three others. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

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